

## WHAT DOES ALL OF THIS MEAN?

Medicaid Estate Recovery does not have any effect on the recipient's medical benefits under the Nebraska Medicaid Program during their or their spouse's lifetime.

However, upon the passing of the recipient, Nebraska's DHHS becomes a creditor of the estate (Probated or non-probated) of the deceased recipient or their deceased spouse.

Therefore, like any debt of the deceased recipient that is owed to any creditor such as the pharmacy, nursing home, mortuary, doctor, et cetera, DHHS's claim needs to be satisfied before creditors' claims with lower priority are satisfied as set forth in Neb. Rev. Stat. §30-2487. Priority is as follows:

- (1) *Costs and expenses of administration;*
- (2) *Reasonable funeral expenses;*
- (3) *Debts and taxes with preference under federal law;*
- (4) *Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent **and claims filed by the Department of Health and Human Services pursuant to section §68-919;***
- (5) *Debts and taxes with preference under other laws of this state;*
- (6) *All other claims.*

This means that funds (including the \$4,000 disregarded during the recipient's period of Medicaid eligibility) and/or assets of the estate shall not be distributed to any member of the family or donated even if so directed by a Will until all debts of the estate are satisfied in accordance with Neb. Rev. Stat. §30-2487 including DHHS's claim pursuant to §68-919.

For additional information, please contact:

### DHHS - Estate Recovery

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# NEBRASKA

# MEDICAID ESTATE RECOVERY

*Reduces the cost of Medicaid  
by recovering payments from  
the estates of former recipients*

## WHAT IS MEDICAID?

Medicaid is a public assistance program jointly funded and dually administered by Federal and State Governments to help those in need of health coverage obtaining its authority and direction from Title XIX of the Social Security Act (SSA) and each State's corresponding Medicaid plan.

## WHAT IS ESTATE RECOVERY?

Estate Recovery (ER) is a Federally mandated program whereby each State Medicaid Agency (DHHS in Nebraska) is required to make efforts to recover some or all medical payments made on behalf of recipients of its Medicaid program.

# NEBRASKA

**WHO?** Everyone who dies has an estate – Be it either probated or non-probated.

**WHAT?** An “ESTATE” is defined as “The whole of one’s possessions.” This includes those assets owned by the recipient at the time of their death – either in their possession or to be received at a later time.

See Neb. Rev. Stat. §68-919(4) for Nebraska’s expanded definition of “Estate” for purposes of Medicaid Estate Recovery.

**WHERE?** All Nebraska Medicaid recipients of medical assistance are subject to Estate Recovery. However, efforts to recover only occur after certain creditors’ claims with priority are satisfied and in some situations recovery may be waived or postponed as prescribed in Neb. Rev. Stat. §68-919 and Title 471 Chapter 38 of the Nebraska Administrative Code (471 NAC 38-000).

**HOW?** If the estate is NOT probated, DHHS will work with those responsible to settle its claim. Usually this is family/heirs. Estate Recovery of Probated Estates are settled according to Nebraska’s Probate Code (Neb. Rev. Stat. Chapter 30, et al).

**WHEN?** Only after the death of the recipient and their spouse does DHHS seek information and make recovery efforts in the estate of a deceased recipient.

**WHY?** During the initial and continuation of eligibility determinations, certain assets of the applicant are disregarded as resources that could otherwise have been used to satisfy some or all of their medical expenses. When the recipient dies, previously disregarded resources may be included in the recipient’s estate and may be recovered by DHHS to reduce the cost of Medicaid in Nebraska.

## When did ER become law?

States’ recovery efforts were optional with the inception of Medicaid in the mid 1960’s. The Omnibus Budget Reconciliation Act (OBRA) of 1993 made Estate Recovery mandatory for all State Medicaid Agencies but left certain provisions to the discretion of each state.

In response to the Federal requirements, Nebraska’s Unicameral passed legislation that became effective in July of 1994 and have been periodically revised via subsequent legislation.

Currently codified at Neb. Rev. Stat. §68-919, it outlines the State’s choices within the parameters of the Social Security Act and gives DHHS its direction for Estate Recovery efforts.

## When does the process begin?

As outlined in Neb. Rev. Stat. §68-919...

*(1) The recipient of medical assistance under the medical assistance program [Medicaid] shall be indebted to the department [DHHS] for the total amount paid for medical assistance on behalf of the recipient if the recipient was fifty-five years of age or older at the time the medical assistance was provided.*

Nebraska’s Medicaid Estate Recovery program did not go into effect until July 17, 1994. Therefore, at the earliest, only services provided and paid by Nebraska Medicaid on or after that date may be included in DHHS’s recovery efforts. Recovery is also limited to the availability of claim records of assistance provided the recipient(s) involved.

## Why when the client has died?

Neb. Rev. Stat. §68-919 further explains that:

*(2) The debt accruing under subsection (1) of the section arises during the life of the recipient but shall be held in abeyance [temporarily set aside] until the death of the recipient. Any such debt that exists when the recipient dies shall be recovered only after the death of the recipient’s spouse, if any and only when the recipient is not survived by a child who is either under twenty-one [21] years of age [at the time of the recipient’s death] or [regardless of age] is blind or totally and permanently disabled as defined by the Supplemental Security Income criteria.*

## When an Estate is NOT Probated?

DHHS receives notices of death from several sources and will send the contact (usually a family member) in the recipient’s Nebraska Medicaid file a cover letter explaining the process and an “**Asset Form...**” to be completed with the deceased recipient’s financial information including assets as well as liabilities (debts still owed at the time of death) of the estate.

## When an Estate IS Probated?

Neb. Rev. Stat. §30-2483 requires that notice of a pending Probate shall be published giving creditors of the estate two (2) months to file their claim in the applicable County Court or forever be barred. It also states that “...If the decedent was fifty-five years of age ...the notice shall be mailed to the Department of Health and Human Services with the decedent’s social security number and if available...the name and social security number of the decedent’s [pre-deceased] spouse.”

**NOTE:** If the estate IS being probated, completion of an “**Asset Form...**” is not necessary. In a probated case, Legal Counsel for the Personal Representative will file an Inventory and Schedule of Proposed Distribution satisfying DHHS’s need for information necessary to settle its claim.

## Add’l Statutory Requirements?

Source: LB72 (2015); LB268 (2017) & LB593 (2019)

Portions of LB72 (2015) and LB268 (2017) were repealed or modified via the passing of LB593 (2019).

Neb. Rev. Stat. §77-2018.02(6) requires that DHHS be notified when a Petition to Determine Inheritance Tax is filed in the County Court of jurisdiction. No response from DHHS is statutorily required.

However, if a “Certification of No Recoverable Amount” pursuant to Neb. Rev. Stat. §68-919(4)(e) is necessary, DHHS must be authorized to release any (Protected Health Information (PHI) such as whether or not a deceased person received medical assistance from the Nebraska Medicaid Program. The applicable form and information is available on the web at: [dhhs.ne.gov/Pages/Medicaid-Estate-Recovery.aspx](https://dhhs.ne.gov/Pages/Medicaid-Estate-Recovery.aspx)

Contact DHHS if you need additional assistance.